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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH VONZIP WHITE,

Defendant and Appellant.

D055500

(Super. Ct. No. SCN243405)

APPEAL from a judgment of the Superior Court of San Diego County, Timothy M. Casserly, Judge. Affirmed as modified.

On March 25, 2008, police officers contacted Kenneth Vonzip White as he left his home. They arrested him and searched him. In his pants pocket they found a large plastic bag containing 24 rocks of cocaine base of approximately equal size, individually wrapped in plastic. The rocks weighed 8.15 grams, exceeding the amount someone would have for personal use. A usable amount of cocaine base ranges from 0.10 of a

gram, selling for \$10, to 0.4 of a gram, selling for \$40. White did not appear to be under the influence of a drug, and no drugs or drug-related items were found in his home.

A jury found White guilty of possessing cocaine base for sale (Health & Saf. Code, § 11351.5)¹ with two prior drug convictions (§§ 11351.5, 11352) within the meaning of section 11370.2 (count 1) and possessing cocaine base (§ 11350, subd. (a)) (count 2). The jury also found White had suffered a strike (Pen. Code, § 667 subd. (b)-(i)) and had served four prior prison terms (Pen. Code, § 667.5, subd. (b)). As no probation priors (§ 11370, subd. (a)), the jury found White had three prior section 11350, subdivision (a) convictions, one prior section 11351.5 conviction and one prior section 11352, subdivision (a) conviction. The court sentenced White to 18 years in prison: twice the four-year middle term for possessing cocaine base for sale, three years for each section 11370.2 enhancement and one year for each prison prior. The court stayed sentence (Pen. Code, § 654) on the conviction of possessing cocaine base.

The abstract of judgment lists, as the code sections pertaining to count 2, "11350(a)w/ 11370(a)." White appeals, contending the abstract incorrectly treats section 11370, subdivision (a) as establishing a distinct criminal offense rather than an enhancement. White also contends the court erred by allowing separate convictions of possessing cocaine base for sale and the necessarily included offense of simple possession. The People concede the latter point and state that because the conviction on

¹ All further statutory references are to the Health and Safety Code unless otherwise specified.

count 2 must be stricken, the corresponding reference to section 11370, subdivision (a) must be stricken as well.

Multiple convictions may not be based on necessarily included offenses. (*People v. Reed* (2006) 38 Cal.4th 1224, 1227.) When they are, the conviction of the lesser offense must be reversed. (*People v. Moran* (1970) 1 Cal.3d 755, 763; *People v. Magana* (1990) 218 Cal.App.3d 951, 954 [possession for sale and simple possession].) White's conviction on count 2 must be reversed and the abstract must be amended to remove references to that conviction.

DISPOSITION

The judgment is modified by striking the conviction of possessing cocaine base (§ 11350, subd. (a)) (count 2). As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward it to the Department of Corrections and Rehabilitation.

HUFFMAN, Acting P. J.

WE CONCUR:

McINTYRE, J.

O'ROURKE, J.